THE VERMONT CENTRAL RING.

2 184

HOW THE ROAD WAS PLUNDERED BY ITS MANAGERS.

BRIBERY AND CORRUPTION.

ARGUMENT OF

CHARLES N. DAVENPORT

OF BRATTLEBORO.

Delivered at St. Albans, Oct. 27–28, 1875, in the R. R. Accounting, before Hons. Paul Dillingham, John L. Edwards and Dudley C. Dennison, Special Masters in Chancery.

ST. ALBANS:
MESSENGER PRINTING ESTABLISHMENT.
1875.

CHARLES N. DAVENPORT.

[From the Stenographic Report of the St. Albans MESSENGER.]

All the day Oct. 27th and the forenoon of the 28th, was occupied by Charles N. Davenport, Esq., counsel for Col. Rush C. Hawkins, of New York and Austin Birchard of Newfane, holders of Vt. Central 1st mortgage bonds, in presenting his argument to the masters who were taking the accounts of the receivers. To publish what he said in full would require a paper five times the size of the MESSENGER and exclude everything else; but the importance of the subject and the expectations of what Mr. Davenport would say were such that we felt the necessity of taking a full report by stenography, and from that we lay before our readers a careful abstract and in certain of the more interesting parts the exact language. He treated, the first day, of 1st, the personnel to the receivership, 2nd, the Vermont & Canada railroad, 3d, the various loans, 4th, the Stanstead, Shefford & Chambly road, 5th, the Rutland lesse, 6th, the Ogdensburg lease, 7th, the contract with the Northern Transportation Co., 8th, the Missisquoi railroad, 9th, investments in outside enterprises, 10th, payments to keep up organization of old Vt. Central, 11th, incidental expenses of Vt. & Canada, 12th, lobbying and 13th, the bribery of W. C. Brown. Each one of these subjects he thoroughly exhausted, giving innumerable references to the testimony and occasionally passing some comment upon the law or morality of the question, which relieved the monotony of facts and figures.

THE RECEIVERS, TRUSTEES AND ADVISORY COMMITTEE.

Beginning with the receivers he said that John Gregory Smith was appointed in December 1858, and had drawn funds on account of salary, not intending to exceed $4,500 a year; that he also then became and is now a trustee of the 1st mortgage; that about June 28, 1855 he bid off the Vt. Central stock at Sheriff's sale and has nearly ever since been president of that corporation; that from '58 to '69, E. W. Peck of Burlington was its clerk, and since then George Gregory Smith, son of said receiver, has been; that during his receivership Gov. Smith was employed by the Vt. & Canada as agent to supervise the building of the "Burlington branch" and was paid for it $5,250; also the Swanton branch and was paid for that; that he has drawn from the trust on account of services as receiver $65,706 52. W. C. Smith was a Vt. & Canada director from '59 to '72, and president after '67; he was treasurer of both roads from '59 or '60 until '67; became trustee of 2d mortgage Jan. 21 '64 and is now; became trustee of 1st mortgage and one of the receivers July 20 '70; his salary as president was $1,000, treasurer $1,200 and clerk $300, before he was appointed receiver, and for services and expenses as receiver he has drawn $34,449.83. Joseph Clark became trustee of 1st mortgage and receiver in Jan. 1859; director of Vt. & Canada in '58: construction agt. of Vt. & Canada with Gov. Smith, for which he was paid $5,250; has drawn on account of services and expenses as receiver $29,776.24.

Lawrence Brainerd was also a receiver and at the same time a trustee of the 1st mortgage and a Vt. & Canada director.

As to the power of the receivers, he claimed that all they have, save such as attaches to the office, was conferred by the order of Chancellor Poland, April 6, 1860; by mandate of the Supreme Court, and decree pursuant thereto, 1861, and the order of Chancellor Wilson, Aug. 16 '67, constituting a board of management to "run and manage said property."

Such bondholders as chose have met annually from '64 to '70 and elected an "advisory committee;" no provision was made for this in any decree, until the "compromise decree" of Jan. 19 '71; by resolution of meeting they were to audit the accounts of the receivers and advise with them in regard to the management of the road; he asked the masters to report that there was no evidence that either of his clients ever attended said meetings or helped elect the committee; also the salaries paid to Pinkerton and Drury as such committee, their interests in the equipment and other trust loans and their stock and dividends in the car companies.

VT. & CANADA RAILROAD.

The cost of construction was $1,348,500

and on this sum alone was the rent of 8 per cent. and the security agreed upon, July 9, 1850; such rent would be $107,880 a year, which he claimed was all the receivers were authorized to pay, and they should account for the excess; that Jan. 19, '64 the stock was increased $651,500, on petition of the Company, for funding back rents; by the same decreee it was further increasvd $250 000, for building Swanton branch, and he wished the report to show who was notified, and how, and who appeared and assented to the decree. The Central took possession of the Canada, under agreements of '49 and '59 sometime during the latter year; the road was completed to Rouses Point in '52; that in October '51 the Central was mortgaged for two millions, John Smith, Wm. Raymond Lee and John S. Eldridge being the trustees; it became insolvent and June 28 '52 surrendered to the trustees and has ever since been hopelessly insolvent; that May 1 '67, by order of Chancellor Pierpoint, the Vt. & Canada stock was increased to $2,500,000, service being accepted by E. W. Peck, clerk of Vt. Central, J. W. Newton, clerk of Vt. & Canada, W. C. Smith and R. F. Taylor, trustees of 2nd mortgage, by Pinkerton, Andrews and Taylor, advisory committee, and no other notice was ever given to any of the parties interested; May 17th 1871, the stock was further increased $500,000, only one day after the application was made, without notice to anybody, simply on consent of the solicitors; 327 shares of this stock were issued to W. C. Smith, in violation of a decision of the Supreme Court. The excess of interest paid on the several increases of stock he figured at $846,961.21, which he claimed should be accounted for.

THE TRUST LOANS.

The first equipment loan, $700,000, was authorized by Chancellor Poland, Sept 7'65 and Mr. D. asked the masters to report all the proceedings connected with its issue, and especially whether any sinking fund was set apart as ordered, and if so where is it. The interest paid on this loan to July 1'73 was $413,614. The second equipment loan was for $300,000, authorized by Chancellor Pierpoint May 1'67, he wanted all the particulars reported, and especially a decree of Chancellor Wilson dated May 22 '68. The interest paid to July 1'73 was $130,666. The third equipment loan was for $1,000,000, authorized by Chancellor Wilson Apr. 13 '69; asked to have history reported; interest to July 1'73, $302,304. What authority had the receivers to pay 8 per cent. on these loans or to make a discount of $36,000 95 on the third one? In this connection Mr. Davenport said:

I ask your Honors for a finding as to what authority these receivers had to make a donation of $1000 to the V. C. R. R. Library, or give one of these equipment bonds. I agree with my brother Walker that the purpose for which that donation was made is in one sense a meritorious one. It is desirable to encourage among employes of this trust a taste for reading. It would have been an eminently proper thing for Gov. Smith to take $1000 out of the profits of the Montreal and Vermont Junction Railroad, or out of the profits of the Sullivan lease, and hand it over to this library association. It would have been an eminently proper thing for W. C. Smith to take $1000 out of the profits which he got through the royalties paid him upon car wheels and castings furnished by the St. Albans Foundry company; such kind of benevolence as that would have somewhat sugared over this terrible pill which the holders of these securities have got to swallow. But it is an entirely different thing for men to be benevolent with that which is not their own than it is from that which is their own. This trust has been managed too much upon the theory that it is all the private property of John Gregory Smith, Worthington C. Smith and Joseph Clark; too much upon the theory which my brother Underwood suggested here, that a great many people entertain in regard to it—that it was merely a carcass to be fed upon. Upon that theory, if they own it of course they may give away its property. They have a right, if they please, if that is the theory, to take $500,000 of these security holders' money, and put it into an hospital and a church, and call it the Vermont central hospital and the Vermont central church. They have just as good right legally, their moral right is just as good, to take $500,000 of the money of this trust to found an asylum for broken down railroad men, like those who have managed the Erie road, the Boston & Lowell and the Eastern road. They are going to need a hospital by and by, gentlemen, and it would be just as legitimate an appropriation of this trust for them to set aside $500,000 to found an asylum where they can be cared for in future, as to take $1,000 out to aid a library with. The purpose, so far as the library is concerned, I agree is a great deal more commendable.

Further speaking of the loans, he enumerated the engines and cars on hand June 1, '58, June 1, '66 and June 1, '72. Until '61 the receivers operated only the Central and Canada, 186 miles of road; when the first equipment loan was authorized 105 miles more had been added, being the Burlington and Swanton branches, the M. & Vt. Junction, the S. S. & C. and the Sullivan; it was on account of this increase that the equipment loan was asked for. To show whether it was necessary or profitable, Mr. Davenport presented a statement of tonnage and net earnings for each year from '66 to '71, showing that while the tonnage in '66 was 361,760 and the net earnings $295,039.73, the tonnage had increased in '71 to 763,380, but the net earnings had actually decreased to $275,587.00. So much for "growth and development."

The Vt. Central guaranteed 8's, $1,000,000, were authorized by Chancellor Royce, May 17, '71, on one day's notice; asked to have history and standing reported, also authority for paying 8 per cent. and discounting $14,854,58; he figured interest paid to July 1, '73 at $93,420.

The income and extension bonds, $2,000,000, were authorized by Chancellor Royce Apr. 20, '72, on five days' notice. What authority was there to pay 8 per cent. or sell at 90? How many of these bonds were taken by the managers for debts due them, or for which they were personally liable? The interest paid up to July 1, '73 is $38,140.

THE STANSTEAD, SHEFFORD AND CHAMBLY ROAD.

There is a possibility, gentlemen, that from the testimony of Gov. Smith here you might, but for the paper evidence in this case, come to the conclusion that the trust had some sort of title to the S. S. & C. R. R. I don't know but you think now, gentlemen, that the trust does own it. Fearing that you might think so because it has been sworn to so many times here, I feel justified in again calling your attention to it and again reading or having read the papers connected with this transaction—because it is all on paper. When I say that, I mean that all facts are on paper, and I believe there is enough to protect this trust from the attempt which has been made, as I believe, to shoulder upon it one of the improvident bargains which John Gregory Smith and Joseph Clark have made, and which they continued to hold and take the benefit of for some four or five years, and only placed it upon the trust when they found that it was disastrous and ruinous. He went on, then, to review the history of the purchase. The first mention of the road in the chancery records is in a petition dated April 12 '67, in which they state that they have found it "absolutely necessary" to control this road, which could be done only by purchasing the stock and bonds, at an expenditure of $364,000. It was represented that all parties assented to it and the first and second mortgage bondholders of the Central agreed to take the new bonds to be secured on the S. S. & C. road in payment of their then overdue interest. A loan of $500,000 was authorized, and Mr. Davenport asked the masters to report fully in regard to it, and in this connection he said:

I expect that you will find in your report that, in reference to that charter, no evidence was furnished to you as to how much of that stock Asa B. Foster owned, or how many of the bonds he owned, except the vague recollections or misrecollections of Gov. Smith. Not a single share of that stock has been produced before you, not a single one of those bonds has been shown you, you don't where they are, you can't tell where they are; the whole matter, gentlemen, in reference to this S. S. & C. R. R. and the title which this trust has to it, belongs as much to the realm of the unknown as the burial place of Moses. You cannot, any of you, tell, and we never shall know until we can get hold of Foster, and then perhaps he won't tell. We have got to stand upon the presumption that after eight or ten years has elapsed, so good, so pure and so holy men as Joseph Clark, John Gregory Smith and Gyles Merrill won't do anything wrong. That is the explanation that brother Fifield gives of it. He says it is a matter of regret to think that they cannot tell you anything more than they have done. I presume that these honest men, after eight or ten years has elapsed, when no order of the court of chancery in referenca to the accounting here has been obeyed, have done everything right.

But he asked the masters to report that the receivers made no mention of their connection with that road, in any report to their bondholders, until May 31, '67; that the trust books show an account entitled "S. S. & C. Purchase," the first date being Sept., '67, the amount expended for the purchase being $475,336.67, and it was paid to Foster; that among the vouchers is an order on G. Merrill, Supt., to pay Foster $65,000, on account of purchase, signed simply "Joseph Clark" and "J. Gregory Smith;" that in Apr. '65 Smith and

Clark were paid by the trust for certain rolling stock $57,900, Dec. 10, '65, for tools, ties and lumber, $21,100 and March 1, '69, for shop stock, interest, etc. $28,048.54—making a total of $107,048.54. After making various other requests for findings in relation to the history of the transaction, he asked that they report that the books show that there is due from A. B. Foster $23,560.64, which he had collected from the Canadian government for postal service, $39,310.30 due from him to the trust or the S. S. & C. and $15,009.71 due to the trust directly, besides a balance from roads owned or controlled by Foster, of $4,523.08. He declared that the contracts between Smith and Clark and said Foster, dated Dec. 31 '62 and May 11, '66 were all there was in relation to the purchase of that road; that the trust has never obtained a legal or requitable title; that the receivers have expended for 12 miles of tram road from Waterloo to some mines $75,818.44 and $4,065.77 for surveying etc.; that from May 31 '68 to July 1'73 they paid interest on the purchase amountiug to $150,699.89; and he declared that they should account for all these moneys paid for purchase, construction, interest etc. In conclusion, on this subject, he said: You will find, gentlemen, that every single paper, every single voucher up to 1867 is in their names individually or their names as lessees, personally, of the S. S. & C. R. R., and there is but one obvious answer that can be made to these appearances. It is possible for men to believe so implicitly in the integrity of John Gregory Smith, in the correctness of his recollections, that when he swears to a fact that is contradicted by other circumstances and contradicted by paper after paper, over his own signature, that he will be believed against those papers; but, thank God, the time will come, if it does not come when your report is filed, when these men's mendacity will be manifest to everybody.

THE RUTLAND LEASE.

After stating the history of this contract, he read from Gov. Smith's Horticultural Hall Report that it was entered into "with a full recognition of the fact that losses would ensue, in all probability, for the first few years," and averred that the only hope of making it remunerative was based on an expected increase of earnings and diminution of expenses. He said: Now, your Honors, if it is within the province of receivers, appointed by the court of chancery, to enter into a contract of that kind, with full knowledge that for the time being, at any rate, it will prove unremunerative, and speculating upon the chances that by the increased development of business it may possibly be made remunerative, I want to hear the supreme court of Vermont say so. I want to see how it will read in a book. I want to see how such a statement as that, if you have got the power to make it, will read in a report of yours. He stated that the losses from the lease, up to July 1, '73, amounted to $831,786.14 and held that the receivers should account for them.

THE OGDENSBURG LEASE.

This road, wholly in the State of New York, was taken with the knowledge that it had never netted a sufficient sum to pay the rent. The loss has been $408,691.95, and it should be accounted for. The lease was taken in the name of the Vt. & Canada, but he desired the masters to report who the Vt. & Canada directors were at that time.

NORTHERN TRANSPORTATION CO.

This corporation, organized in Ohio, owned and operated a line of propellors on the lakes from Ogdensburgh to Chicago. It made a contract with this trust, or the Vt. Central "line," by which it borrowed from the Ogdensburg road $600,000 and a sinking fund was to be created to pay it. The propellers have been run at a constant loss and the past summer have not been run at all. The trust was to pay into the sinking fund a fraction over 77 per cent., as its share in the line, and bear losses in the same proportion. The losses have amounted to $689,843.19; the contract was unauthorized and illegal and the losses should be accounted for. If there is any sinking fund, where is it and how can the trust reach it?.

MISSISQUOI RAILROAD.

The trust leased this road for 20 years, paying 40 per cent. of gross earnings and guaranteeing that this should amount to 7 per cent. on the $500,000 of mortgage bonds. This was sanctioned by Chancellor Wilson, Sept. 26, 1870, J. Gregory Smith was president and a portion of the line was located over his plank road. The total loss to the trust has been $113,173.29. The contract was not approved by the advisory committee, nor by B. P. Cheney and Lawrence Barnes. The receivers should account for the losses.

OUTSIDE INVESTMENTS.

The investments in or loans to Welden, Mt. Mansfield, and Waterbury hotel companies, N. T. Co. of Ohio, and Woodstock and Mt. Washington R.R. Cos., aggregate $92,250; none have ever paid a dividend; no authority was asked from or granted by the court, and he claimed that the receivers should account for the whole sum.

VT. CENTRAL CORPORATION ETC.

Since the failure of the company its stock has been owned by Gov. Smith and he is its president. He and his son, and E. W. Peck, W. C. Smith, Jo D. Hatch, Levi Underwood and Geo. M. Dexter have drawn salaries from the trust, for keeping alive this defunct organization. What was the necessity and where the authority for it? He also asked to have the amounts paid as incidental expenses of the Vt. & Canada reported.

LOBBYING.

The next subject to which I desire to invite your attention is the subject of lobbying expenses. I ask the masters to find and report the various sums which have been paid by the receivers.

Mr. Willard, interrupting, jocosely reminded him that Col. Rolla Gleason was sitting behind him.

Mr. Davenport said, Well, this Col. Rolla Gleason is a professional lobbyist, as I understand the matter. The money that has been paid to him has been paid, for aught I know, openly. He has not been down there at Montpelier plying his vocation under any false disguise. Anybody who knew him, or has ever seen or heard of him, or has ever seen a certain picture which Charles Barrett of Grafton once penciled off, knows that he has not been engaged in any illegitimate business. There is no member of the legislature who has ever been seduced from the path of rectitude and duty, by any false pretences of Mr. Gleason as a lobbyist. It is that class of men who have gone up there with a $50 retainer in their pockets, taken after they were elected members of the legislature, or else paid to them on the day following the adjournment, and have done work which Jo Hatch laid out for them to do, I say, that should be criticised, and not open and avowed professional lobbyists, as I understand Mr. Gleason is, although I don't know. At any rate he is not a lawyer.

Now, your Honors, there are four vouchers, two of them for moneys received by David A. Smalley and one for moneys paid out by John Gregory Smith, charged to this trust at the same time, and ten years after the transactions out of which they grew actually took place. There is nothing that I can say, gentlemen, there is nothing that any man can say, which brings out into bolder relief the character of the transaction which Judge David A. Smalley, over his own signature, admits that he was a party to. If any friend of his desires it, although it was not read here as evidence, but if any friend of his desires that his explanation should be made a part of your report, as one of the counsel here, I have no objection to its being done. When it comes to this, that a man holding the position of a judge of the only federal court of exclusive jurisdiction in this State, while he is a member of that court, can step down from the bench and go to Montpelier, and over his own signature afterwards acknowledge the receipt of $3,500 for money expended *in* that legislature, we have got to a point when it is about time for us to stop and look back a little. To my mind this is the most disgraceful transaction connected with this trust. I am sorry to say it, because the man who participated in it has stood to this time, and perhaps will hereafter stand entirely well with the people of this State. If that receipt of his had not been in his own handwriting, there would have been some way that we could escape from the conclusion that the money was used for lobbying purposes, but he says in so many words that it was for "money expended in the legislature and preparatory thereto."

This $700 for Gov. Smith, and which a voucher was furnished for at the same time, and which with these Smalley vouchers was in the hands of Lawrence Brainerd for ten years because he was ashamed to have them appear upon the books of the trust, show what the character of this transaction was. Now, your Honors, if the Supreme court of this State is prepared to justify such expenditures as these, we all of us want to know what reason they will give for it.

Mr. Davenport then requested findings in regard to the expense of procuring certain charters, and read a long list of vouchers for money expended by J. D. Hatch and others at Montpelier, Albany and Washington and he set that gentleman forth somewhat as follows: Jo. D. Hatch was employed by the trust, "looking after the general interests" of the receivers in their relations to the politics and legislation of the State; he attended caucuses and

conventions whenever those "interests" would be thereby promoted; was in the habit of getting acquainted with such attorneys as were likely to become members of the legislature and place them under retainer; as to others, whose influenee was thought worth securing, he caused them to be provided with free passes; he has taken rooms at the Pavilion and remained through each session since 1861; he was therc, as stated in some of his vouchers, for such purposes as "resisting adverse legislation," "securing favorable legislatiou," "defeating general railroad law" and "bill taxing property of railroads," "cash paid for retainers" etc; he was not a lawyer and worked through personal conferences with the members or their friends; he did not appear in argument before committees; he employed counsel and his retainers were allowed in settlement without mentioning names; his salary was $1500 and expenses until '67 and after that $2,000 and expenses. Mr. Davenport here recounted the payments made by and to him, which aggregated $30,749.64. None to whom he paid money were the recognized attorneys of the Trust, and none of their names appear as such on the books of the receivers.

He asked the masters to hold Gov. Smith accountable for $1,115.30 which he, by his own hand, certified that he used before the legislature "in resisting application by the R. & B. road for a parallel line to Rouses Point; also a bill to equalize freights, for putting in switches, and to protect persons who had paid-fare from being put off the cars, etc." Also another voucher of $700 for lobbying.

From '61 to '73 Bradley B. Smalley was paid a salary of $1,000 a year as "passenger agent," the same being charged to the expense of the Montreal agency. Gyles Merrill was not able to give any information as to his services; Gov. Smith says they got him to look after their interests in Burlington, where they had a bitter contest with the steamboat company and the Rutland road, but he could not tell what he did; Mr. Smalley himself says he looked up the passenger business chiefly between Montreal and New York; but the only business that he was able to testify to was to see to the posting of some handbills in New York city and the procuring of some cars once for the transportation of soldiers. At the time in question he was clerk of the U. S. circuit and district courts, clerk of the Rutland R. R. Co., an attorney in active practice, especially in the court of which he was clerk. His father was the District Judge, the owner of all the stock of the Rutland & Burlington R. R. Co., its president and a trustee of the 2nd mortgage (which was then in possession and operating the road) and was one of the masters appointed by the court of Chancery to examine and report upon the accounts of the receivers of this trust. B. B. Smalley was paid the same salary before 1861 and objection was made before the former masters—Judges Smalley and Pierpoint—to the allowance of the same, but they allowed it; objection was made to the chancellor and he recommitted the matter for further report as to the precise nature of the services; no further report was ever made. Mr. Davenport then asked these masters to find that no legitimate services were ever rendered to the trust by Mr. Smalley; that he was only a nominal passenger ageut, and was carried upon the books in a manner to disguise the real purpose of his employment, which was to secure his influence and that of his father, in their relations to the Rutland road, the District Court, politics and legislation. The same purposes were in view when they paid him $100 as retainer in bankruptcy matters in the fall of '72. For all this they should account.

THE BRIBE TO W. C. BROWN

Feb. 24, '70, the Ogdensburg lease was entered into; W. C. Brown was attorney for that road, and to overcome his scruples as to the right of the Ogdensburg road to give a lease to a foreign corporation, he was paid $25,000 retainer, and a salary of $2,500 a year. This was not approved by either Lawrence Barnes or Joseph Clark, of the receivers, or by the advisory commiteee; it was regarded by B. P. Cheney and Gov. Smith as extravagant, but it was Brown's price and they preferred to pay it rather than have the lease fall through. Mr. Fifield says that probably nobody but Pratt, Brooks and their dogs ever yelped at it. Well now, gentlemen, if it has got to this, iu this State of Vermont, that the officers of the court of Chancery, when they want to get a lease of a road in a foreign jurisdiction, deliberately, with full knowledge that the fee is exorbitant and extravagant, with full knowledge that it is the price of a villain, but in order to accomplish their end they have got to pay that price, if an appropriation of $25,000 of the trust funds is a legitimate appropriation, even though it is disguised in the form of a retainer, I want to see how other lawyers, aud others courts, and other trusts view that kind of transactions. There is

no language that I can use, there is no language that you can put in your report, that will convey to any man's mind disapprobation more strong or condemnation more severe, than the character of the transaction itself carries with it.

The 2d day he spoke from 8 until 11 a.m., upon the following topics: 1st the law of trusts, 2d the Foundry contract, 3d, free passes, 4th, car companies, 5th, the Sullivan lease, 6th, the secret service fund, 7th, extravagance and peculation, 8th, the salaries of the managers and closing with an admonition to the Masters.

THE LAW OF TRUSTS.

He called the attention of the masters to the fact, as he claimed, that the evidence shows that receivers depleted the trust by appropriating to their own private uses monies that belonged to the trust, and he read decisions of the courts in cases analagous to this and said:

I read this because the ground upon which this case has thus far proceeded is that no matter what Worthington C. Smith or John Gregory Smith or Joseph Clark have taken out of this trust in the way of profits upon the Montreal and Vermont Junction, and the Sullivan, or through royalties, if you only find that the trust has not thereby been defrauded they can make away with their ill-gotten gains, unpunished and unaccountable for them. That may be the law of Vermont. No case has yet been decided involving these questions directly in this state. In almost every other state in the Union and in the Federal courts these questions have been passed upon.

Mr. Poland—The same law has been held in Vermont.

Mr. Dennison—I do not suppose any question arises about it. The question does not come before us, and if it did, we should not have any difficulty about it, such is the law the world over.

Mr. Davenport—I am glad to hear one of your Honors say that that is the law the world over. After having heard the contrary doctrines enunciated for the last two months, and heard both the counsel who have preceded me claim that, provided you find the trust has not been defrauded there is no accountability, it is decidedly refreshing to hear my brother state the law and to hear one of your Honors state it.

ST. ALBANS FOUNDRY CONTRACT.

Mr. Davenport then gave a history of the Foundry Contract and read from the papers to show that a portion of the royalty was reserved to J. G. Smith, but they having both sworn that that was an error, he said there are very many other statements, which have been made by these receivers during this investigation, which are in the direct teeth of papers which have their signatures to them. There was no evidence that any of the receivers knew that W. C. Smith was receiving any royalty or commission for these car wheels and castings except his brother, J. G. Smith. Both Chency and Clark denied any knowledge of the fact until it was developed by the testimony before the investigating committee.

You will remember, gentlemen, what took place when Worthington C. Smith was under examination. I asked him to furnish to the masters a statement of the various sizes of wheels which he had furnished. Of course the great bulk of them was 33 inch wheels, because that is the size used on passenger and freight cars. He said in response to my questions that it made no difference with him; we might call them all 33 inch wheels, "for," said he, "if I have got to refund this, it is more than I am able to refund anyway." The speaker then furnished statements of the quantities furnished, and of their cost as compared with prices of other roads, showing that these receivers paid more for their car wheels and castings, and received less for their old iron than other roads. He spoke of the poor quality of the wheels furnished by the Foundry Co. up to 1867 or 1868, and referred to evidence, among which was the statement of E F. Perkins, master mechanic, who said that the car wheels made by this Foundry Co. up to that time were so bad that he peremtorily refused to put them under passenger cars, although J. G. Smith ordered him to do so, saying that so long as he was responsible for the lives of the passengers who rode over this road, he would not and could not use their wheels.

Now, your Honors, the pretense that these car wheels after they were made of all new iron, were better than those used upon other railroads, is not only unsupported by proof but grossly improbable. I am justified in saying that all railroads and the best wheels that can be obtained, buy the manufacture of the St. Albans Foundry has attained no such celebrity yet that any of its wheels are used by any other railroad. It is impossible that the trust should not be defrauded on the very face of such an arrangement as this was. Roy-

alties of that size upon car wheels and castings could not be paid unless somebody was cheated. There must be a cheat either in the quantity or quality, or else there must be a cheat in the price, and there has been, probably in both. I think the key has been furnished by which you can unlock any mystery, if there has been any mystery, as to why this trust has been so ready to attach to itself these additional railroads by lease, by construction or by purchase. Every single mile of railroad added to that originally operated by the trust has created a markct for new car wheels and new castings. Every pound of new castings furnished has put into the pocket, I say of John Gregory Smith and Worthington C. Smith, half a cent a pound.

It madc no difference with them personally how far the trust was depleted by the lease of the Rutland road and its family, because out of this trust thousands of dollars would be taken annually to pay the profits and royalties. And if there was nothing more in this case to account for the present financial condition of this trust than the fact that they have so run it and so managed it that $159,000 has gone into the pocket of one or both of these two Smith receivers, that would be a sufficient solution of the question. And it is for that reason that the law has provided that just such consequences shall follow just snch conduct on the part of those occupying a fiduciary relation like that held by these receivers.

The market which could be made for car wheels through the organization of the Vermont Iron and Car Co.,—because those cars were all manufactured here at the company's shops; the cars for those wheels were furnishcd here by this company to the trust—enabled Worthington C. Smith, alone or with his brother, to take a royalty of $3 on each wheel, and what difference does it make with him whether the trust makes or loses out of the operation of those cars? He himself is going to get his profit. His royalty will compensate. There is nothing to be lost here but honor and character, and what is that as against money!

In this connection I trust you will not overlook what I say is the wicked attempt of Worthington C. Smith to deceive you by his testimony, and the exhibits filed therewith. Mr. Davenport then said that W. C. Smith, knowing, not only that his tables but his sworn statement were untrue, deliberately testified that the car wheels and castings cost the trust less than it would have cost to purchase them at Troy. He stated on cross examination that the correctness of his statement depended on whether C. W. Mosely said that his company (the Troy & Boston) got 1¼ cents a pound for old iron, when he knew that Mr. Mosely had not mentioned the subject at all in his deposition. He must have known that the Troy & Boston R. R. Co. did not sell its old car wheels for 1¼ cents when other corporations were selling for over two cents a pound, but still he made the statement here and filed those exhibits. Mr. Davenport then read the deposition of Mr. C. W. Mosely, Superintendent of the T. & B. R. R., as contradicting the statement of W. C. Smith.

FREE PASSES.

Now, with reference to the subject of free passes, I ask you to report that the receivers have been in the habit of issuing them to one or more representatives of each newspaper in the state, to the state and federal officials and their families, to the judges of the supreme court and their families, the judge and clerk of the United States court, the Marshal of the United States for this district and his deputies, the collector of the port of Burlington and his deputies (twenty-seven in number) for the only year we have any trace of, to the leading business men, politicians and lawyers of this state, to large numbers of the members of both branches of our state legislature, to each Member of Congress from the state, and that among other recipients of these passes I ask you to report that each member of this Board of Masters holds the free pass of these receivers, and the time that you have held it.

Mr. Edwards—What do you claim the time to be that the masters have held passes?

Mr. Davenport—I don't know that I have any particular claim in that regard. I claim that the testimony of Gov. Smith is that Gov. Dillingham, the chairman of your board, has held the free pass of this trust since the time that he was elected Governor, and I think his testimony was before. I think the testimony of Gov. Smith is that Mr. Dennison has held the pass of this receivership ever since he (Smith) came into the trust. I am not aware that there is any evidence from Gov. Smith as to how long your Honor, Mr. Edwards, has held it. I think he did not testify. I was examining Gov. Smith and one of your Honors stated himself that he held a pass, and I inquired of your Honor, Mr. Edwards, if you were willing to state

as to whether you held it, and your reply, if I am not mistakeu, was that you did and that you could not get along without it, or something like that. Perhaps I am mistaken, I think I have a right to the fact that this receivership has been distributing its passes.

I do not wish to be misunderstood, gentlemeu, I do not want you should imply from anything that I have stated, that you have accepted those passes iu any other spirit, or with any other purpose or object in view than as a mere compliment on the part of these receivers to you. I do not wish to be understood that when the judges of our supreme court have, as they have for years, taken the passes of this management for themselves aud their families they have taken them as a bribe. I do not mean that you have taken it so. It is with no such purpose or object in view that I want this matter to be made a part of your report, but it is because I want to raise the question and I want the courts of Vermont squarely to decide that question, as to whether the receivers and managers of a railroad corporation have a right to give away auy portion of the funds of that trust to anybody, no matter who it is. I believe myself that a receiver who is running a railroad has no more right to give a free pass over that railroad to any individual than a guardian, an administrator or an executor has to donate portions of the fuuds which are in his hands. I say this merely as apologies, if any apology is necessary, to the supreme court or to you or the public for bringing this before you.

Mr. Edwards—Do you claim, Mr. Davenport, that the committee here, and in fact the most of the bondholders did not know or understand how this was managed with reference to the passes?

Mr. Davenport—I claim, your Honors, and I want you should fiud that Austin Birchard and Rush C. Hawkins, the clients that I represent, knew nothiug about it. If you find that they did know about it I want you should tell me where, upon the records, you find the evidence of their knowledge, and after what has taken place here before you, in the way of efforts to find out who has got frec passes, I would thank you to tell me in your report, if you can, how my clients would be expected to get any knowledge on that subject.

Mr. Dennison here explained in relation to his having passes, saying that some years ago, while doing business for them over their road, he had a pass for a year. Also, while he was United States District Attorney, and since the last election.

Mr. Davenport asked the Masters to report that Gov. Smith had neglected to produce the list of persons to whom free passes were issued, that was used before the investigating committee, and further, that in consequeuce of the want of evidence, you are unable to report the number or value of the free passes issued by the managers from 1861 to 1875.

In response to a question by Mr. Edwards, he discussed the propriety of giving passes to customs officials to ride upon trains, and said: but that is a matter of comparatively small importance. What I do object to, and why I desire to bring this matter before the court is, for the purpose of ascertaining whether these men have a right to donate to you or to me, to the newspaper conductors, the judges of our courts, the men who are fortunate or unfortunate enough to hold official position, the property which they have had placed in their hands to care for, keep and return to the *cestuis que trust* after their receivership has ended. The motive with which these free passes are distributed is entirely different from the motive with which they are accepted. The purpose of these receivers is, beyond all question, to place the parties who receive them under obligations. There is an expectation on their part that in consideration of this donation favors will be granted or returned in response to it. There is no reason why his Honor, the Chief Justice of the Supreme Court of the State of Vermont, should hold the free pass of this trust, which does not apply to the humblest individual that there is within the borders of the State. The fact that he is a judge gives him no right to the exclusive privilege of holding this management's pass. This trust has no better right morally or legally to give to the chief justice of the supreme court, to the members or ex-members of Congress its free passes than it has to give them to the wood-sawyers of this village of St. Albans.

The demoralizing tendencies of this system of giving out free passes will by and by be pretty generally understood. It has become so much a habit in some localities that men do not thiuk about it, they do not look at it as they will. The judge of the supreme court who had got to sit and pass upon an issue in which the keeper of the hotel where he boarded was a party, would think that there was a gross impropriety in his accepting from that hotel keeper his board and lodging during that term of

court. He would not do it. The same judge of the supreme court, so much has the force of habit acted upon him, sees no impropriety at all in taking an annual pass from a railroad company for himself and his family, when he, as judge of the supreme court, almost weekly or monthly has to pass upon questions and cases in which this very railroad management is a party or interested. I have never been able to see, myself, how the statute disqualification is got along with. A pecuniary interest of the smallest kind always stands in the way, in the estimation of an upright judge, in passing upon any question involving that pecuniary interest. The bias that grows out of a relationship within the fourth degree is admitted to be a sufficient disqualification, but none of us see any impropriety in entrusting, no matter how large interests, to the decision of tribunals which have been placed under so great obligations.

Now, as I said, nobody that knows the men who occupy judicial positions upon the bench of our supreme court, suspects that they have been swerved from the path their duty by reason of any of these than ors shown. The results which have always followed the presentation of questions before our court, the highest branch of it at any rate, when they have been sitting as a supreme court—I do not say so with reference to questions which have been passed upon sometimes by judges sitting as chancellors—but when these railroad questions have been brought before the supreme court of our State, they have always decided them in accordance with the law, and I have no doubt but what they always will so decide them.

CAR COMPANIES.

I ask your Honors to find and report that there was paid to the National Car Co., from the general funds of the trust, between March 1, 1859 and July 1, 1873, for car service on roads operated by the trust, besides collections from other roads, $351,034.29, and to the Vermont Iron and Car Co., from May, 1871, to July 1, 1873, exclusive of collections from connecting roads, $205,231.61; that those cars built by the trust for the Vermont Iron and Car Co. were better than those usually built for freighting purposes; that they cost the company less than the usual price of freight cars, and that little or no profit came to the trust from their construction. Mr. Davenport enumerated the rolling stock on hand at the time the Car Co. contracts were made, claiming that the road had an ample supply.

I ask you to report that the trust paid these car companies 3 and 2½ cents per mile for car service, whether loaded or empty, until January 1, 1873; from then to July 1, 1873, 2 cents; since then, 1½ cents. The prices which were paid for these services were too high; higher than was paid by other railroad companies for like services. Is not there very great danger when you build up inside a railroad corporation car companies whose interests are antagonistic to the interests of the trust, that the trust will be depleted? Is it not the experience of every man, and is it not fully demonstrated in the case of these very receivers as to other matters, that when they have a private interest of their own to promote, that private interest is paramount to their public duty as receivers? When you put into Lansing Millis' hands—and he is the general freight and passenger agent, having the control of the traffic department—1200 or 1500 shares in the stock of these car companies, giving him an interest there very much larger than any interest that he can have in the trust; when his subordinates whose influence is worth anything to these car companies are also made stockholders, is there not obvious danger "that when freights are dull and cars abundant the cars of these special companies will be used in preference to those owned by the railroad company?" He called attention to the proof in this connection, showing that the business of the through freight lines had been disastrous to the trust.

He stated that the enhanced operating expenses was due to the freight department, as the passenger department on any railroad is always the most profitable, because the passenger takes care of himself. He gets on and off the cars without any help. It is not necessary that you should have any large number of men to load and unload him, and the price that a railroad corporation receives for the transportation of 175 or 200 pounds enclosed in the clothing of the passenger is ten times as much as they average to get for the transportation of the like weight in the shape of freight. After reading the testimony of the president of the Connecticut River R. R., showing the unprofitableness of the through business over the Central, he said: Is there any doubt but that the testimony of this railroad manager can be relied upon? and if it can be, is there any doubt but that this through freight business, which I insist has been built up for the purpose of furnishing a market for car wheels and castings, for the purpose of

furnishing a business for these inside car companies and not the benefit of the trust, I say is there any question but that this kind of business has been disastrous to the trust? Is there any question but that this subscquent financial ruin was the consequence of these attempts, made by thesc receivers, to better their own personal financial condition by the transportation of large quantities of freight over their M. & Vt. Junction road, to furnishing a market for car wheels and castings, and furnishing employment for these inside ring organizations known as car companies?

I expect that John Gregory Smith will at least be held responsible for the $12,760 per annum which he made in the way of dividends out of the stock of these car companies, which he permitted to be organized and operated inside of the trust. I ask your Honors for a finding that Lansing Millis fixed the rates for which through freights between Boston and Chicago should be transported over these roads, he acting as the agent of wbat was called the Vermont Central line.

THE SULLIVAN LEASE.

Coming to the Sullivan lease, he said he should say but little because tbe subject had been thoroughly gone over by his associates, and hc concurred in what they had said, but he asked the masters to find that John Gregory Smith and Josepb Clark have always been equally interested in this lease, and have shared in the profits; that Lawrence Brainerd had an intercst to the amount of one-third in the profits from the date of the first lease uutil his death; that Lawrence Barnes never had any interest in the Sullivan lease; that since Worthington C. Smith and Ben. P. Cheney, became receivers, they have been interested in this lease and have shared in the profits. Mr. Davenport here furnished statistics of the earnings, expenses and profits of the Sullivan road, and stated that the amount of their profits was $391,187.25.

THE SECRET SERVICE FUND.

Next be gave a history of the secret service fund, the amount of which was $28,878.80, and said: Now, your Honors, it is absolutely certain that a part of this secret service fund was appropriated to Gov. Smith's private uses. There is not any doubt about that uuless you disbelieve what he swore to in 1873 and believe what he now swears to. It is equally certain that a part of tbis secret service fund was used for purposes of corruption. The Hatch voucher shows that $1000 of that money was used for corrupt purposes, in the eye of the law, connected with the legislature in the year 1869. The sum of $1,850 more was used by Hatch just about the time, and vouchers given for it at the close of the session, but he either cannot or will not tell you about it; he says be has forgotten; he has no douht but that he received tbe money but be cannot tell what be did with it. He stands in just the same relation that those disbursers of funds for improper purposes in connection with Congress and with legislatures always stand. You remember the testimony before the congressional committee at the last session, of those witnesses who bad the disbursement of $600,000 of the moneys of the Pacific Mail Co. Not one man of them had any reccollection as to what he did with that money. He had it, he no douht disposed of it for some purpose, but he could not tell about it. That is the condition of Jo. D. Hatch here. Now when you have got the fact that $1000 of the money which went into the bands of Jo. D. Hatch was used for purposes of corruption, it is your right and your duty to infer that the whole $2,850 was used for that purpose. When you find Gov. Smith refusing here to disclose what he paid $1000 to Ben. Smalley for, you have a right to infer that it was used for purposes that were not proper. When be swears here tbat tbere are $14,821.14 of this that he had rather bave charged to him than to tell what he did with it, you have a right to infer that it was used for improper purposes.

I know that one of Your Honors stated here, and at the suggestion of the other members of the board it was not made a part of the record, because tbe reasons which influenced you in coming to that decision were not of momeut, that you would take notice that there were purposes connected with the administration of this trust that money might properly be appropriated for, and the receivers not be bound to tell what they did with it. I tell your Honors that if that is your view, I want you should put it upon yonr report. I want the court of chancery for Franklin county to decide whether or not an officer appointed by that court can take $14,000 of its funds and dispose of them as he pleases, and not tell the court of chancery or the officers what he has done with it.

EXTRAVAGANCE AND PECULATION.

He referred to the large amounts expend-

MIDDLEBURY COLLEGE LIBRARY

ed for elegant depot buildings, machine shops, round houses, &c., and claimed that it was not necessary for the business of the roads actually put in trust.

It is beyond all question in my judgement that very large sums appertaining to this trust have gone into the pockets of John Gregory Smith and Joseph Clark in connection with the construction of the Swantou branch, and of the Burlington branch. We have been unable to find what has become of the money which they have drawn out for those purposes. We do find that a much larger amount of money has been drawn than there is any evidence of having been disbursed. He then proceeded to give a detailed account of the building operations.

MANAGERS' SALARIES.

Your attention has been called to the fact that great roads, like the Erie, pay their presidents $25,000 to $50,000 per annum; that roads like the Boston and Maine, pay $20,000; that Onslow Stearns gets $20,000 for his services, and that a like compensation, in the estimation of the learned counsel who opened the case in behalf of these receivers, should be paid to Gov. Smith for the magnificent results of his management of this great enterprise. You are asked by counsel to award to these receivers a large sum by way of compensation and by way of vindication; that in no way can you vindicate to the public the character, conduct and success of these managers save by giving them a large, round and generous salary. Well, gentlemen, I respectfully submit that you are not here for the purpose of vindicating. The court has imposed upon you no duty of that kind. You are here for the purpose of doing what these receivers, under the law and the order of the court, were bound to do once in six months during the whole period of 12 years that this accounting covers.

One circumstance which has already been commented upon by my associates is the fact that it is clearly proven, no matter what the result may be here, that these receivers have used their position, their relation to this trust, for their own private emolument. It is true that at one end of this trust there is the Sullivan road, out of which they have pocketed $391,000. It is true that at the other end of this trust there is the M. & Vt. Junction road, out of which there has gone into their pockets $493,000. It is true that here between these two ends is the St. Albans Foundry Co., and the contracts which they have had in connection with it, from which their pockets or the pockets of some of them have been replenished to the tune of $159,000. Now, with these profits, not to call them speculations, but with these profits which their position has enabled them to make out of their *cestuis que trust*, how much compensation in addition to that should they have? If the rule is applied to them which courts have been applying to trustees in this country and England for the last hundred years, they will go out of this court without a dollar of compenpensation. They are not cutitled to it. It is only when trustees have been faithful to their trusts, that they should be paid.

RESULTS OF THIS MANAGEMENT.

But there is another consideration here: what has been the result of their receivership? It is impossible for men to conceive a state of things more absolutely disastrous to everything connected with the interests of these security-holders than the consequences of the mismanagement of these receivers. When they were appointed, the trust owed the back rents over and above the earnings, during the period between 1854 and 1858, which were due to the Vt. & C. R. R.; it owed $2,000,000 first mortgage, $1,500,000 second mortgage. That was the sum total of its indebtedness, besides the accrued interest. The amount of Vt. & C. stock then outstanding was less than $1,350,000; to-day that stock amounts to $3,000,000 To-day the first mortgage amounts, with its increase, to $3,000,000 and the interest that has accrued since June, 1, 1872. The second mortgage is $1,500,000, plus all the interest that has ever accrued upon it since the mortgage was made, with the exception of what the holders of those mortgage bonds received through the dividend of the results of the loan on account of the S. S. & C. R. R. There has been added to what are called trust debts an equipment loan amounting in the whole to $2,000,000; a loan guaranteed by the Vt. & C., of $1,000,000; income and extension loans to the amouut of $2,500,000, more than a million of which have been issued; and on the first day of July 1873 there was outstanding against the trust a floating debt amounting to $2,636,265 34—an aggregate here of indebtedness against this trust on the 1st day of July 1873, of at least twelve millions of dollars, and probably nearer fifteen millions.

Now, what is there to show as the result of this splendid management of this trust? Gov. Smith says, additional equipment and improved track; but I have shown you, gentlemen, that the equipment

has not been doubled, and their road, though improved, is still a single track road and has been increased only ten miles in length. The Vt. & Canada stock, which, when these men took hold of this trust, was a stock selling readily at par, which was a favorite stock, which has been invested in by managers of other trusts, guardians, executors, administrators, believing that it would be a good investment—to-day that stock is sold, when there is any sale for it, at twenty cents on a dollar. First mortgage bonds, having for their security this magnificent road, have been by the management of these financiers, rendered almost worthless, or else it has been by the assaults of their enemies. Perhaps I ought, in fairness to Gov. Smith, to say that it is a favorite tale of his, and that he has told it so often that he believes it probably himself, that it is the assaults of his enemies that have reduced those securities down so low. It is unfortunate for this trust that it has for its management men who have enemies sufficiently powerful to do all that.

These equipment loans, which are said to be a primal security upon all this trust property, are worth, some of them, forty cents on a dollar, and some of them thirty cents on a dollar. Now when a man or a set of men have so administered a trust, so broken down and destroyed its credit, so demoralized the State in which they live, have by their conduct brought its courts, its legislature and its people into such a condition as this is to the public mind outside the State, how much, in fairness and justice to all these interests, ought these men to have for doing that work?

ADMONITION TO THE MASTERS.

If you think it is your duty to these receivers, for the purpose of vindicating them—for they have been vindicated a great many times; the legislature has done all that it could to vindicate them; the court of chancery for Franklin county has done all it could to protect them—and if you think it is your duty to vindicate them again by awarding them the high salary that has been demanded for administering the property entrusted to their hands, making valueless the securities that they were originally appointed to take care of and promote, why then, of course, you will do it. But I beg leave respectfully to suggest, gentlemen, that you cannot afford—no tribunal at this time, when such kind of rings as this Vermont Central r[illegible] are falling all around us—no man can afford for the purpose of vindicating the managers to take the position which counsel upon the other side ask you to take.